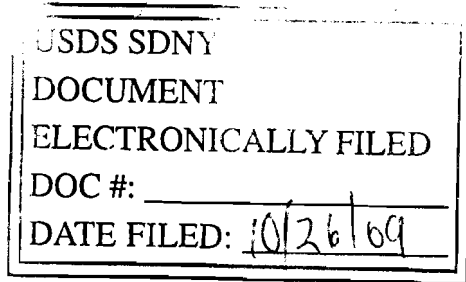


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

-against-

S1 06 Cr. 718 (CM)

HURGENES PIGNARD,

Defendant.

DECISION AND ORDER DENYING DEFENDANT'S MOTION FOR AN
ORDER COMPELLING THE GOVERNMENT TO DISCLOSE
CERTAIN GRAND JURY TESTIMONY

McMahon, J.:

Hurgenes Pignard seeks an order from the Court compelling the Government to provide him with a copy of the grand jury transcript of Detective Toth: "Detective Toth obviously made statements to the grand jury." (Pignard motion dated October 9, 2009 at 6.) Toth testified at trial, that means if Toth had testified before the grand jury, defendant would have received a copy of Toth's testimony as 3500 material. Pignard offers no evidence that the Government violated its 3500 obligations and the court is not prepared to assume any violation.

To the extent defendant is making a broad request for disclosure of the entire grand jury transcript (defendant has made at least two previous motions seeking such relief), that request is denied. In order to obtain grand jury testimony under Rule 6(e)(3)(C), one must satisfy the "particularized need" test as expressed in Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211, 222-23 (1979). Under this test, an individual must show that: (i) the material sought is needed to avoid a possible injustice in another judicial proceeding, (ii) the need for disclosure is greater than the need for continued secrecy, and (iii) the request is structured to cover only the material so needed. Douglas, 441 U.S. at 222. Defendant speculation that there may be something in the grand jury transcript to impeach Toth (who presumably did not testify in the grand jury), fails to satisfy the Douglas test.

This constitutes the decision and order of the Court

Dated: October 26, 2009

A handwritten signature in black ink, appearing to read "Peter M. McMahon".

U.S.D.J.

BY FIRST CLASS MAIL TO:

John P. Collins, Jr.
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